

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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ROY YOUNG,

Plaintiff,  
-against-

THE CITY OF NEW YORK, N.Y.C POLICE OFFICER  
KEVIN BLAKE, SHIELD #2740, POLICE OFFICER  
JUAN BERRIO, SHIELD #28430, AND POLICE  
OFFICER JOSUE RIVERA, SHIELD #03516, EACH  
SUED INDIVIDUALLY AND IN HIS OFFICIAL  
CAPACITY,

**ANSWER TO COMPLAINT**

07 CV 5453 (WHP)

JURY TRIAL DEMANDED

Defendants.

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Defendants City of New York and Juan Berrio, by their attorney, Michael A. Cardozo, Corporation Counsel of the City of New York<sup>1</sup>, for their answer to the complaint, respectfully allege, upon information and belief, as follows:

1. Deny the allegations set forth in paragraph "1" of the complaint, except admit that plaintiff purports to proceed as stated therein.
2. Deny the allegations set forth in paragraph "2" of the complaint, except admit that plaintiff purports to invoke the jurisdiction of the Court and base venue as stated therein.
3. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "3" of the complaint.

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<sup>1</sup> Upon information and belief, "Police Officer Kevin Blake, Shield #2740," and "Police Officer Josue Rivera, Shield # 03516," have not yet been served with process in this action.

4. Defendants state that the allegations contained in paragraph "4" of the complaint are conclusions of law rather than averment of fact and accordingly, no response is required.

5. Deny the allegations set forth in paragraph "5" of the complaint, except admit that the City of New York is a municipal corporation incorporated under the laws of the State of New York, and maintains a police department.

6. Deny the allegations set forth in paragraph "6" of the complaint, except admit that the City of New York trains police officers.

7. Deny the allegations set forth in paragraph "7" of the complaint.

8. Deny the allegations set forth in paragraph "8" of the complaint.

9. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "9" of the complaint.

10. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "10" of the complaint.

11. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "11" of the complaint.

12. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "12" of the complaint, except admit that plaintiff exited his vehicle.

13. Deny the allegations set forth in paragraph "13" of the complaint.

14. Deny the allegations set forth in paragraph "14" of the complaint.

15. Deny the allegations set forth in paragraph "15" of the complaint.

16. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “16” of the complaint.

17. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “17” of the complaint.

18. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “18” of the complaint.

19. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “19” of the complaint.

20. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “20” of the complaint.

21. Deny the allegations set forth in paragraph “21” of the complaint.

22. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “22” of the complaint.

23. Deny the allegations set forth in paragraph “23” of the complaint.

24. Deny the allegations set forth in paragraph “24” of the complaint.

25. Deny the allegations set forth in paragraph “25” of the complaint.

26. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “26” of the complaint.

27. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “27” of the complaint.

28. Deny the allegations set forth in paragraph “28” of the complaint.

29. Deny the allegations set forth in paragraph “29” of the complaint.

30. Deny the allegations set forth in paragraph “30” of the complaint.

31. Deny the allegations set forth in paragraph “31” of the complaint, except admit that a document purporting to be a Notice of Claim was received by the Comptroller’s Office on or about June 6, 2006.

32. Deny the allegations set forth in paragraph “32” of the complaint, except admit that a document purporting to be a Notice of Claim was received by the Comptroller’s Office on or about June 6, 2006.

33. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “33” of the complaint.

34. Deny the allegations set forth in paragraph “34” of the complaint, except admit that a document purporting to be a Notice of Claim was received by the Comptroller’s Office on or about June 6, 2006 and that this claim has not been settled.

35. Deny the allegations set forth in paragraph “35” of the complaint, except admit that plaintiff filed the instant action on or about June 8, 2007.

36. Deny the allegations set forth in paragraph “36” of the complaint.

37. In response to paragraph “37” of the complaint, defendants repeat and re-allege their response to the allegations set forth in paragraphs “1” through “36” as though fully set forth herein.

38. Deny the allegations set forth in paragraph “38” of the complaint.

39. Deny the allegations set forth in paragraph “39” of the complaint.

40. Deny the allegations set forth in paragraph “40” of the complaint.

41. In response to paragraph “41” of the complaint, defendants repeat and re-allege their response to the allegations set forth in paragraphs “1” through “40” as though fully set forth herein.

42. Deny the allegations set forth in paragraph "42" of the complaint.
43. Deny the allegations set forth in paragraph "43" of the complaint.
44. Deny the allegations set forth in paragraph "44" of the complaint.
45. Deny the allegations set forth in paragraph "45" of the complaint.
46. In response to paragraph "46" of the complaint, defendants repeat and re-allege their response to the allegations set forth in paragraphs "1" through "45" as though fully set forth herein.
47. Deny the allegations set forth in paragraph "47" of the complaint.
48. Deny the allegations set forth in paragraph "48" of the complaint.
49. In response to paragraph "49" of the complaint, defendants repeat and re-allege their response to the allegations set forth in paragraphs "1" through "48" as though fully set forth herein.
50. Deny the allegations set forth in paragraph "50" of the complaint.
51. Deny the allegations set forth in paragraph "51" of the complaint.
52. In response to paragraph "52" of the complaint, defendants repeat and re-allege their response to the allegations set forth in paragraphs "1" through "51" as though fully set forth herein.
53. Deny the allegations set forth in paragraph "53" of the complaint.
54. Deny the allegations set forth in paragraph "54" of the complaint.
55. Deny the allegations set forth in paragraph "55" of the complaint.
56. In response to paragraph "56" of the complaint, defendants repeat and re-allege their response to the allegations set forth in paragraphs "1" through "55" as though fully set forth herein.

57. Deny the allegations set forth in paragraph "57" of the complaint.
58. Deny the allegations set forth in paragraph "58" of the complaint.
59. Deny the allegations set forth in paragraph "59" of the complaint.

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE:**

60. The complaint fails to state a claim upon which relief can be granted.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE:**

61. Defendants have not violated any rights, privileges or immunities under the Constitution or laws of the United States or the State of New York or any political subdivision thereof.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE:**

62. At all times relevant to the acts alleged in the complaint, defendants City of New York and Berrio acted reasonably in the proper and lawful exercise of their discretion.

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE:**

63. Any injury alleged to have been sustained resulted from plaintiff's own culpable or negligent conduct and/or by the intervening conduct of third parties, and was not the proximate result of any act of defendants City of New York or Berrio.

**AS AND FOR A FIFTH AFFIRMATIVE DEFENSE:**

64. The individual defendant has not violated any clearly established constitution or statutory right of which a reasonable person would have known and therefore is protected by qualified immunity.

**AS AND FOR A SIXTH AFFIRMATIVE DEFENSE:**

65. At all times relevant to the acts alleged in the complaint, defendant City of New York, its agents and officials, acted reasonable and properly in the lawful exercise of their discretion. Therefore, it is entitled to governmental immunity from liability.

**AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE:**

66. There was probable cause for the plaintiff's arrest, detention and prosecution.

**AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE:**

67. Plaintiff cannot obtain punitive damages as against the City of New York.

**AS AND FOR A NINTH AFFIRMATIVE DEFENSE:**

68. Plaintiff has failed to comply with the conditions precedent to suit.

**AS AND FOR A TENTH AFFIRMATIVE DEFENSE:**

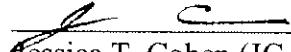
69. Plaintiff has failed to comply with New York General Municipal Law §§50-(e) and (i).

**WHEREFORE**, defendants City of New York and Juan Berrio request judgment dismissing the complaint in its entirety, together with the costs and disbursements of this action, and such other and further relief as the Court may deem just and proper.

Dated:           New York, New York  
                 September 4, 2007

MICHAEL A. CARDOZO  
Corporation Counsel of the  
City of New York  
Attorney for Defendants City of New York and  
Berrio  
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(212) 788-1895

By:

  
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Jessica T. Cohen (JC 0044)  
Assistant Corporation Counsel

To:    Steven A. Hoffner, Esq.  
      Attorney for Plaintiff  
      350 Broadway, Suite 1105  
      New York, New York 1105 (ECF)

Docket No. 07 CV 5453 (WHP)

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Plaintiff,

-against-

THE CITY OF NEW YORK, N.Y.C POLICE  
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#28430, AND POLICE OFFICER JOSUE  
RIVERA, SHIELD #03516, EACH SUED  
INDIVIDUALLY AND IN HIS OFFICIAL  
CAPACITY,

Defendants.

**ANSWER**

***MICHAEL A. CARDOZO***

*Corporation Counsel of the City of New York  
Attorney for Defendants City of New York and Juan  
Berrio*

*100 Church Street  
New York, N.Y. 10007*

*Of Counsel: Jessica T. Cohen  
Tel: (212) 788-1895  
NYCLIS No.*

*Due and timely service is hereby admitted.*

*New York, N.Y. ...., 2007*

*..... Esq.*

*Attorney for .....*